

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED  
BILLINGS DIV.  
2007 AUG 8 PM 1 41  
PATRICK E. LUFFY, CLERK  
BY

LEWIS ELDON HUFFINE,

Petitioner,

vs.

YELLOWSTONE COUNTY DETENTION  
FACILITY, SHERIFF, BILLINGS,  
MONTANA,

Respondents.

CV-07-85-BLG-RFC

ORDER ADOPTING FINDINGS  
AND RECOMMENDATION OF  
U.S. MAGISTRATE JUDGE

Petitioner Eldon Huffine, a federal prisoner proceeding pro se, has submitted a petition for writ of habeas corpus. *Doc. 1*. On July 12, 2007 Magistrate Judge Carolyn Ostby entered her Findings and Recommendation. *Doc. 6*. Magistrate Judge Ostby recommends this Court dismiss the Petition for failure to pay a filing fee or move to proceed in forma pauperis.

Upon service of a magistrate judge's findings and recommendation, a prisoner has 20 days to file written objections.<sup>1</sup> In this matter, Petitioner filed his Reply to Findings of U.S. Magistrate Judge on July 17, 2007. *Doc. 7*. These objections require this Court to conduct a *de novo* review of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 635(b)(1).


<sup>1</sup>Although 28 U.S.C. § 636(b)(1) provides for 10 days for objections to the findings and recommendation of a U.S. Magistrate Judge, this Court extends that time for objection in prisoner cases to twenty days in order to take into account the Supreme Court's ruling in *Houston v. Lack*, 487 U.S. 266, 270-71 (1988), and the somewhat greater mailing time that is involved in sending documents into and out of a prison facility.

Petitioner claims that requiring a filing fee to a writ of habeas corpus is an unconstitutional suspension of the privilege of the writ of habeas corpus in violation of Art. I § 9 of the U.S. Constitution and Art. II §§ 16 & 19 of the Montana Constitution. However, Magistrate Judge Ostby specifically informed Petitioner that he could file a motion to proceed in forma pauperis in lieu of paying a filing fee. The Court has yet to receive such a motion in this case.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and **IT IS HEREBY ORDERED** they be adopted in their entirety: Mr. Huffine's Petitioner for Writ of Habeas Corpus (*Doc. 1*) is **DISMISSED WITH PREJUDICE**.

The Clerk of Court shall notify the parties of the entry of this Order and close this case accordingly.

DATED this 8 day of August, 2007.

  
RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE